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Protecting Alaska's Future

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Alaska's High Court Issues Favorable Ruling in PERS Litigation:
Ruling on calculating leave cash-ins saves state millions

(Anchorage) – Alaska Attorney General David Márquez announced today that on Friday the Alaska Supreme Court ruled that a former state employee was not entitled to inflate his PERS benefit by including cashed-in leave as part of his compensation for purposes of calculating his retirement benefits.

"This is a significant case from the standpoint of protecting the state's finances, and protecting the state's retirement system from claims for benefits that are not authorized or funded by the legislature," said Márquez. "There are over 250 related claims for similar leave cash-ins pending with the Division of Retirement and Benefits. The Court's opinion noted that in a worst-case scenario a ruling in favor of the appellant could have cost the state \$36 million."

Michael McMullen was hired in 1969. The law in effect at that time did not specifically exclude leave cash-ins from the definition of "compensation" upon which Public Employees' Retirement System (PERS) benefits were based. In 1977 the law was amended to exclude leave cash-ins from the definition of compensation. McMullen was not eligible for leave cash-ins until some time after the law was amended.

McMullen claimed that his right to include cashed-in leave as part of his retirement calculations was based upon article XII, section 7 of the Alaska Constitution. This provision provides that the state may not diminish or impair the benefits a member has accrued under the state's employee retirement system.

At page 15 of the opinion the Court held that:

Before the legislature amended the law in 1977, neither by law nor by practice did McMullen actually acquire a right to have his cashed-in leave included as part of his compensation. He therefore had no right that could have been impaired when the legislature excluded cashed-in leave from the definition of compensation. Accordingly, the division's refusal to allow McMullen to include his cashed-in leave when calculating his retirement benefits does not violate article XII, section 7 of the Alaska Constitution."

"I wish to personally commend former Assistant Attorneys General Keith Levy and John Gaguine as well as current Assistant Attorney General Virginia Ragle for their efforts on behalf of the state," said Márquez. "When you do the math it becomes crystal clear that any decision that impacts the state's financial obligations under our retirement system can have significant

fiscal repercussions, and affect the viability of funds that provide important benefits to public employees.”

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